

ICPS newsletter®

The state should protect its citizens against discrimination

Discrimination can be found in Ukraine in a variety of types and forms, say top experts. However, today, the government is unable to guarantee protection against discrimination to its citizens because of huge flaws in legislation and insufficient attention to this issue on the part of Ukrainian society. Still, these same experts think it a bad idea to set up a separate government agency to prevent discrimination. Instead, they suggest giving more powers to existing bodies. Participants in a recent expert debate on the topic noted the key ways to improve legislation and proposed that a broader debate on discrimination be launched in Ukraine

On 7 July 2005, the International Centre for Policy Studies held a roundtable called "Discrimination and Minorities: Its roots and ways to counter it." These consultations are part of the process of preparing a bill "On protection against discrimination" undertaken jointly by the Verkhovna Rada Committee for Human Rights, Ethnic Minorities and International Relations and ICPS. Participants were representatives of different interest groups: specialists, minorities, the Rada, and executive bodies.

Is there discrimination in Ukraine?

Different and often contradictory responses to this question revealed that the problem of discrimination is complicated and needs to be examined more thoroughly. There are several different approaches that can be applied in Ukraine, but they first need to be evaluated as to their costs and benefits. In general, participants agreed that discrimination does exist, but they saw the problem variously.

Discrimination is really a problem. Although today discrimination may not be as urgent a problem in Ukraine as it is in Bulgaria, Hungary or Romania, recent trends are negative. During the election campaign, different political forces tended more and more to take advantage of the fact that this issue is unregulated. This means that now is the time to take steps to prevent and counteract discrimination.

To evaluate the depth of the problem, more thorough study is needed. Although there is no doubt that discrimination exists in Ukraine, each aspect of

discrimination needs to be examined in depth. This will help understand in which areas this problem really hurts. Only then can a plan of action to counteract discrimination be properly developed.

It is hard to evaluate discrimination properly. As a rule, discrimination bothers only those who are directly affected by it. As a result, those who belong to the majority and don't feel discriminated against often presume it doesn't exist. It is moreover difficult to say what constitutes discrimination because there are no subjective and objective criteria for it. Unless such criteria are established, it will be very difficult to properly evaluate discrimination, although it clearly does exist.

Why is existing legislation not working?

According to specialists, legislative problems that allow discrimination to continue unchecked in Ukraine include:

- *Extremely poor regulation.* For example, a basic piece of legislation like the Civil Code does not even mention discrimination.
- *Overly narrow regulations against discrimination.* For example, Art. 24 of the Constitution establishes equality only for Ukrainian citizens. Similar flaws exist in almost all other Ukrainian laws that contain provisions on discrimination.
- *Too much declarative legislation.*
- *The lack of many mechanisms that might counteract discrimination.* For example, there is no mechanism for distributing

Budget funds allocated for free legal assistance.

- *No institution that might determine whether certain actions by individuals are discriminatory or not.* This means that, during a court case, the courts cannot call on an individual expert or organization to present a professional opinion.

- *Little reliable statistical data* or regular monitoring. Reliable data would make it possible to evaluate discriminatory processes and their impact.

- *The lack of well-defined basic terms* and concepts, such as direct, indirect and positive discrimination.

Participants also recommended certain steps to improve anti-discrimination legislation:

- *Improve accountability.* Specifically, Art. 161 of the Criminal Code needs to be amended, as it was developed in way that does not recognize all forms of discrimination and requires evidence of deliberate intent, which is impossible to prove in court, and so on.
- *Establish proper definitions* of discrimination-related terms. This includes specifying basic concepts in the Law "On ethnic minorities."
- *Adopt the Concept of Ethnic Policy* already developed in Ukraine and harmonize all future approaches to anti-discrimination policy with it.
- *Apply existing experience in monitoring* human rights and develop basic rules for monitoring to unify results received from numerous human rights NGOs.
- *Develop a system for analyzing and legally classifying* negative discrimination.

Is an anti-discrimination law needed?

Experts were divided as to whether a separate anti-discrimination law was needed. Different opinions included:

A separate anti-discrimination law is premature. A separate law should be considered only after the flaws in existing legislation have been corrected.

Ukraine needs an "all-encompassing" anti-discrimination law. This is a natural and logical step, given Ukraine's aspirations to European integration. Indeed, the experience of the country's neighbors to the west proves that adopting a similar piece of legislation makes it easier to combat discrimination.

Community work is needed. Since Ukraine has a basic problem with laws that do not work, another law is unlikely to change anything. Institutions of civil society need

to pay more attention to inculcating certain ethics in Ukrainian society that will make discrimination unacceptable. NGOs should also take a more active role in disclosing discrimination.

Is a special government agency needed?

Almost all the experts were against the idea of setting up a separate government agency to combat discrimination and provide assistance to victims of prejudice. According to these experts, it makes more sense to strengthen the existing system by providing it with appropriate functions, powers, financial and human resources,

and so on. In the first place, experts spoke in favor of preserving or increasing the status of the State Nationalities and Migration Committee, saying that this body should take the lead in combating discrimination.

In addition, experts said that the Office of the Ombudsman was another effective means to fight discrimination and suggested that it be developed to become an active advocate for victims of discrimination. ■

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Hi-tech corporate leaders see Ukraine as a future market leader

World leaders in hi-tech manufacturing such as Intel, a top microchip maker, are considering opportunities to establish production facilities in Ukraine. A favorable location near the European Union, a reliable material base and a competitive, skilled labor force could make Ukraine a realistic alternative to China. The main barrier to such plans is the country's unfavorable business and investment environment. To improve the situation, investors recommend applying the experience of Central European countries

These topics were discussed at a 7 July 2005 roundtable called "Prospects for Hi-Tech Leaders to Set up Production in Ukraine," organized by the Verkhovna Rada Ad Hoc Future Commission, the Ukrainian Union of Industrialists and Entrepreneurs, the Institute for Reforms, and the International Centre for Policy Studies. This was the second roundtable in a series dedicated to Ukraine's investment policy. Participants this time were members of the Verkhovna Rada, representatives of the Government and foreign and Ukrainian business, independent experts, and academics.

Nigel Godwin, Intel's EMEA ODM/EMS Programs Manager, presented the wish-list of the East European Working Group (EEWG), which includes top hi-tech electronics companies, in terms of investing in setting up production capacities in Ukraine. The transfer of some part of production capacities to Ukraine and access to the Pan-European Transport Corridor V that runs Venice-Ljubljana-Budapest-Uzhorod-Lviv-Kyiv, will make it possible for international companies that have so far

been placing their production capacities in Asia to cut delivery times to the European market by 20–25 days and to reduce dependence on China. In addition to a high-quality labor force, Ukraine has all the necessary materials and resources to launch full-scale production: steel (about 500,000 t per year is needed), alloys, chemical substances, electricity, water, and so on. Mr. Godwin said he hoped to meet representatives of the Ukrainian Government or the Ukrainian investment promotion agency to discuss the conditions for Intel to invest in Ukraine.

Jabil Circuit Ukraine General Director Philippe Costemale, whose company is also a member of the EEWG and has already invested in Ukraine, emphasized the need to use the positive experience of Central European countries in preparation for accession to the EU. All these countries used one and the same mechanism to attract investment: establishing industrial parks where investors could set up production facilities to manufacture goods for export purposes. According to Mr. Costemale,

industrial parks, special economic zones, scientific parks, and technological free zones became an effective instrument to attract foreign direct investment, create new jobs, increase the volume of cross-border commercial activity, transfer technologies, and develop production, raising economic indicators and living standards.

Participants in this debate also discussed bills and initiatives aimed at mitigating the negative consequences of the sudden cancellation of special investment regimes under Ukraine's SEZs, TPDs and technoparks. On 13 July 2005 it became clear that participants had understood need to tackle the uncertainty in the investment climate and to attract hi-tech companies when: (1) the Government supported a presidential initiative of setting up the State Agency of Investment and Innovation; (2) the president mentioned the possibility of restoring investment regimes for SEZs in September 2005, after the activity of each zone is analyzed to determine a compensatory regime; and (3) the premier said that the Government would initiate special tax regime for imports of hi-tech equipment and components. ■

Materials from this roundtable can be found online at <http://www.icps.kiev.ua/eng/project.html?pid=89>. For more information, contact Ildar Gazizullin by telephone at (380-44) 484-4400 or via e-mail at igazizullin@icps.kiev.ua.

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